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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,695	06/26/2003	Diana Clifton Draper		5058

7590 03/09/2004
Edward P. Dutkiewicz
P.O. Box 511
Largo, FL 33779-0511

EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,695

Applicant(s)

DRAPER ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

On page 1, in the first paragraph, of the specification the information referencing applicants' co-pending application must be updated.

Appropriate correction is required.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84 because a reference character has not been used to reference the smaller hole appearing in Figure 4. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

Applicant has failed to include a reference character to reference the small hole appearing in Figure 4.

Appropriate correction is required.

Double Patenting: 35 U.S.C. 101

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 1: rejected under 35 U.S.C. 101

Claim 1 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 10/606,688. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Nonstatutory Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1: rejected under Double Patenting

Claim 1 is rejected under the judicially created doctrine of double patenting over claim 1 of U. S. Patent No. 6,688,877 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Claim 1 of U. S. Patent No. 6,688,877 differs from claim 1 of the present application only by the inclusion of the term "**methanol**" as the quantity of combustible liquid. The more narrowly defined invention set forth in claim 1 of U. S. Patent No. 6,688,877 would therefore anticipate, if patented, the more broadly recited "**a quantity of combustible liquid to be used as the fuel**" of the present application claim.

Claim 1: rejected under obviousness-type double patenting

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,688,877 in view of FR '898 (FR 544898) in view of Hanje et al and Yang (U.S. Patent No.- 5702239) .

Claim 1 of U.S. Patent No. 6,688,877 describes the invention substantially as set forth in claim 1 of the present application. Claim 1 of U.S. Patent No. 6,688,877 however does not include an o-ring seal associated with the beveled seat, nor does it include an intermediate guard and second o-ring associated therewith for providing added sealing of the exterior guard (2) with the cylinder interior wall surface.

Fr '898 shows and discloses an air pump including a beveled seat (6), a ring seal (4) and an additional ring seal for engaging the interior surface of the cylinder and providing added sealing engagement therewith. Fr '898 however does not rely on an o-ring seal associated with the beveled seat, nor does it include an intermediate guard and second o-ring associated therewith for providing added sealing of the exterior guard (2) with the cylinder interior wall surface.

Hanje et al teaches, form the same manually actuated air pump filed of endeavor as Fr '898, using o-ring type ring seals (79) on pump heads, as a suitable ring type seal.

Yang (Figure 6) teaches, form the same manually actuated air pump filed of endeavor as Fr '898, that it is known to provide reciprocating pump heads with intermediate head guard portions associated with an additional o-ring seal (not referenced) for providing a suitable sliding seal of the exterior guard with the cylinder interior wall surface.

In regard to claim 1, for the purpose of providing a suitable alternative ring seal for the beveled pump head, it would have been obvious to a person having ordinary skill in the art to substitute an o-ring seal for the ring seal (4) in FR '898, in view of the teaching of Hanje et al. Also, for providing a suitable alternative seal for the pump head/guard seal (1) of Fr '898, it would have been obvious to a person having ordinary skill in the art to modify the pump head to include an intermediate guard and second o-ring associated therewith, in view of the teaching of Yang. Also, it would have been obvious to a person having ordinary skill in the art to utilize a manually actuated pump of FR '898, as modified herein above, for purpose of providing a suitable hand operated pump sub-assembly for the claimed lantern and fuel system set forth in claim 1 of U.S. Patent No. 6,688,877.

Claim Rejections - 35 USC § 103

Claims 2-6 are rejected under 35 U.S.C. 103(a)

Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '898 (FR 544898) in view of Hanje et al and Yang (U.S. Patent No.- 5702239) .

In regard to claims 2-6, the phrase "A lantern and fuel system with a pump subassembly the pump subassembly adapted to facilitate the forming of a tight seal in the system during pumping" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose

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of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Claims 2-6 lack any structure, in the body of the claims, which would suggest dependence of the claimed subject matter on the preamble. Indeed, defines the body of the claim as "the pump assembly including".

Fr '898 shows and discloses an air pump including a beveled seat (6), a ring seal (4) and an additional ring seal for engaging the interior surface of the cylinder and providing added sealing engagement therewith. Fr '898 however does not rely on an o-ring seal associated with the beveled seat, nor does it include an intermediate guard and second o-ring associated therewith for providing added sealing of the exterior guard (2) with the cylinder interior wall surface.

Hanje et al teaches, form the same manually actuated air pump filed of endeavor as Fr '898, using o-ring type ring seals (79) on pump heads, as a suitable ring type seal.

Yang (Figure 6) teaches, form the same manually actuated air pump filed of endeavor as Fr '898, that it is known to provide reciprocating pump heads with intermediate head guard portions associated with an additional o-ring seal (not referenced) for providing a suitable sliding seal of the exterior guard with the cylinder interior wall surface.

In regard to claims 2-6, for the purpose of providing a suitable alternative ring seal for the beveled pump head, it would have been obvious to a person having ordinary skill in the art to substitute an o-ring seal for the ring seal (4) in FR '898, in view of the teaching of Hanje et al. Also, for providing a suitable alternative seal for the pump head/guard seal (1) of Fr '898, it would have been obvious to a person having ordinary skill in the art to modify the pump head to include an intermediate guard and second o-ring associated therewith, in view of the teaching of Yang.

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

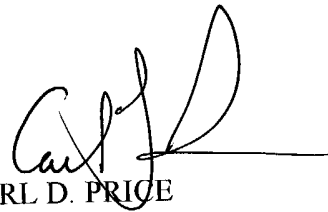
USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749

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